



## New South Wales Law Reform Commission - Discussion Papers

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### Names: Registration and Certification of Births and Deaths - Discussion Paper [1987] NSWLRCDP 17

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##### Terms of Reference

On 11 November 1985, the Attorney General of New South Wales, the Hon Terry Sheahan, BA LLB MP, referred the following matters to the Commission for inquiry and report:

- 1.Criteria for registration of the surname of a child of married and unmarried parents; registration procedures and acknowledgment of paternity in relation to an ex-nuptial child; details to be recorded in relation to births and deaths; provision of certificates omitting potentially embarrassing details appearing in a registration.
- 2.Any related matter.

##### Participants

For the purpose of the reference a Division was created by the Chairman in accordance with [s12A](#) of the [Law Reform Commission Act 1967](#). The Division when first constituted on 3 April 1986 comprised the following members of the Commission:



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Mr Keith Mason QC (Chairman)

Helen Gamble

Eva Learner

Russell Scott

The Division was reconstituted on 19 August 1987 to comprise:

Helen Gamble (Chairman)

Eva Learner

Ronald Sackville

Russell Scott

**Research Director**

William J Tearle

**Research and Other Assistance**

Mr Mark Robinson

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#### Submissions

The Commission invites submissions on the issues raised in this Discussion Paper. Submissions and comments should reach us by **29 February 1988** when preparation of a final report will begin. All inquiries and comments should be directed to:

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The New South Wales Law Reform Commission is examining the law and practice relating to the registration and certification of births and deaths in this State. In light of information already received from various public interest groups, academic lawyers and government departments, the Commission has formulated several options for reform. This paper is written to advance the Commission's inquiry by encouraging discussion and submissions.

On 11 November 1985, the Attorney General of New South Wales, the Hon Terry Sheahan, BA LLB MP, referred the following matters to the Commission for inquiry and report:

1. Criteria for registration of the surname of a child of married and unmarried parents; registration procedures and acknowledgment of paternity in relation to an ex-nuptial child; details to be recorded in relation to births and deaths; provision of certificates omitting potentially embarrassing details appearing in a registration.
2. Any related matter.

The reference was given to the Commission as a result of representations and complaints received by the Attorney General in recent years and follows a significant decision of the New South Wales Equal Opportunity Tribunal concerning the naming of a new born child. In a dispute between a married couple over whether their child was to be registered in the husband's or wife's family name, the husband's name was preferred by the Registry. The husband and wife were living apart at the time of the birth of the child. The Equal Opportunity Tribunal held the decision to be discriminatory and the Registry changed its practice to accept the first name submitted. Neither practice is entirely satisfactory and the Commission has been asked to consider alternative solutions.

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Every birth, death, marriage, adoption, legitimation and still birth occurring in New South Wales must be notified to the Registry of Births Deaths and Marriages. Statute and administrative directions prescribe the information to be supplied and the people obliged or permitted to supply it. The statutes which regulate the powers and functions of the Registry are the Registration of Births, Deaths and Marriages Act 1973 and the [Notification of Births Act 1915](#). Other legislation also has an impact on the work of the Registry. In preparing this paper the Commission has had regard as well to provisions in the following Acts: [Coroners Act 1980](#), Children (Equality of Status) Act 1976, Artificial Conception Act 1984, [Adoption of Children Act 1965](#), [Evidence Act 1898](#), [Marriage Act 1961](#) (Cth). The Principal Registrar has provided information about the internal directions he has given to his staff.

Once recorded, the bulk of the Registry's information is available to departments of both the State and Federal governments. Plans are well in hand to install a modern computer system at the Registry. At present information is supplied to some departments (the Australian Bureau of Statistics, for example) on computer tapes or print-outs, but when the new system is operating the possibility will exist of on-line computer access being made available to these bodies. Thus, few of the details notified to the Registry can be regarded as entirely confidential, although before releasing the information the Principal Registrar obtains assurances as to confidentiality and destruction or safe storage of the information. Individuals may obtain information from the Registry by showing a sufficient reason for their interest in any registered event. The information is supplied on certificates or extracts of births, deaths and marriages.

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The functions served by the Registry are threefold. The Registry assists government in keeping accurate and current records of events affecting the population. This allows information to be compiled on birth and marriage rates and on the causes and ages of death by the Australian Bureau of Statistics and State and Commonwealth health bodies. More broadly it enables the compilation of data and statistics to assist in future planning and development. The Registry supplies private individuals with certificates to provide evidence of identity, to compile family histories and to establish family relationships (including the recording of legal changes in family relationships, such as adoption and legitimation). For most people the issue of a passport depends upon the Registry's information. The information held by the Registry can also be crucial in establishing relationships for the purposes of administering deceased estates.

More fundamental questions about the functions of the Registry are also raised by the terms of reference of this inquiry. To represent the Registry as merely a passive recipient of the information notified is misleading. Greater demands are made on the Registry. Increasingly its records are used to assist in legal processes and the public has come to rely on the register for up-to-date and accurate information. As a result the Principal Registrar has felt obliged to formalise procedures to safeguard the privacy of the register. He also exercises administrative discretion to ensure that unacceptable material is excluded from the register and that details which he regards as undesirable or embarrassing do not appear on certificates.

The case which gave rise to this reference provides a good example of the changing use of the register and the resulting difficulties being experienced by the Registry. If the register is regarded as serving only the limited purpose of a record of events, there is no reason why in that case the Principal Registrar should not have accepted notifications from both parents and made two entries on the register. Where they have no legal significance, the only harm done by the two entries would be administrative inconvenience and possibly, if the duplication were not made plain, some confusion in the statistics taken from the records.

It is clear, however, that these days entry of a surname on the register is popularly regarded as having some legal significance. Although technically not essential to achieve the purpose intended, the production of a certificate issued by the Registry simplifies many legal procedures. An Australian passport is difficult to obtain without a  **birth certificate**  and its production is the easiest way to satisfy a marriage celebrant that a person is of marriageable age. The production of a marriage certificate is also the most efficient means of proving a marriage in proceedings in the Family Court and schools and sporting groups often demand a  **birth certificate**  as proof of age for their purposes. If entries on the register are to be allowed to have legal significance, decisions must be taken as to the duties of the Registry to ensure the currency, accuracy and authenticity of the records. In particular, a decision has to be taken on who should bear these responsibilities, the Principal Registrar or some other, independent, person or tribunal.

**The Commission is of the view, tentatively, that so far as possible the Principal Registrar should be protected from the exercise of any wide discretion. So far as is possible, questions of what information should be entered on the register should be spelt out in the legislation which regulates the Registry and, where a need for the exercise of discretion exists, this should be exercised by a court.**

The Principal Registrar should be able to refer to clear guidelines to determine which surname should be entered on the register and any dispute over his decision should be referred to a court.

**The Commission seeks an expression of views on the proper function of the Registry and the powers which the Principal Registrar should be asked to exercise.**

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Review of this area of law is timely. A new and dynamic computer system is soon to be installed. This will allow the Registry far greater flexibility. Information will be recorded and provided at a much greater speed, searches of registrations will be done with much less identifying information and the Registry will be able to produce different types of certificates for different purposes. A greatly improved service will be offered to the public. Delays in the processing of applications will be minimized and it will be possible to produce certificates while the applicant waits. The system will also have the capacity to issue new types of certificates which could omit some of the information on the register. For instance, a new abridged form of  **birth certificate**  will be available in addition to the extract or full  **birth certificate**  now provided. Thus where a certificate is required simply for the purposes of identification and proof of age, such details as the date of the parents' marriage, the place of marriage and their occupations need not be made available. All details will continue to be recorded, however, and will be available when requested in a full  **birth certificate** .

While this new technology will undoubtedly expand the capacities of the Registry, it will also have implications for privacy. These are considered below in relation to specific problems brought to the Commission's attention.

The Commission has identified the following issues relating to the law and practice involved in the registration and certification of births and deaths in New South Wales:



At present married and unmarried parents are required to follow different procedures to register a birth. This has led to claims that the rules requiring birth registration discriminate unfairly, if not unlawfully, between parents who are married and those who are not.

At present  **birth certificates**  contain details of the marriage of the child's parents. The date of the marriage, or the fact that there has been no marriage, can cause embarrassment.

The details on a death certificate, including cause of death and the place of death, can also cause embarrassment.

At present the procedures for resolving disputes between parents who wish to register different surnames for their child seem unsatisfactory.

The current system of birth registration does not accommodate the naming practices of some ethnic groups.

Although the fact that the surgery has been performed may appear on the register, at present there are restrictions on the amendment of  **birth certificates**  to reflect sexual reassignment following transsexual surgery.

There is debate whether the register should record information relevant to the genetic background of a child conceived by means of artificial insemination or in vitro fertilization. There is also debate as to the confidentiality to be accorded such information.

In this paper some tentative views, and in some cases specific options for reform, are set out.

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The views expressed in this paper have been considered and derived with the following principles in mind. The Commission believes that these principles should be the basis for reform.

It is an essential task of the Registry to record facts and events with accuracy.

The functions performed by the Registry are important to government and individuals. Sufficient information should be recorded so as not to fetter these functions, but claims to privacy cannot be disregarded without sufficient justification.

Every child has a right to a name. Although registration of a name at birth does not fix the child with a name, **birth certificates** are important proof of identification in our society. It is important therefore to provide a mechanism for resolving disputes between parents over the name of a child.

A free choice of names should be encouraged, reflecting both the position at common law and the pluralistic nature of Australian society. The system should facilitate registration of any reputed and therefore lawful name.

Discrimination between married and unmarried parents and any unnecessary embarrassment to ex-nuptial children are undesirable.

The register should be capable of easy amendment where there has been a change of name which is recognised by the law.

Registration procedures should be administratively convenient to avoid the need for the Principal Registrar to make discretionary decisions or decisions on matters of law.

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The Registration of Births, Deaths and Marriages Act 1973 (the Act) imposes a duty upon parents to complete a form of information and send it to the Registry within one month of the birth of a child. In respect of an ex-nuptial child this statutory obligation extends only to the mother. The father of an ex-nuptial child may take part in the notification of birth, but need not.

On registration of a birth, the Act requires information to be furnished on the child's name, sex, parentage, and date and place of birth. The Act then gives the Principal Registrar a discretion to seek and record such other particulars as he sees fit. At present it is the practice of the Registry to require further particulars of the following:

the surname of the child;

the occupation, age and place of birth of the father;

the age, place of birth and general area of residence (municipality or shire) of the mother;

if married, the date and place of marriage of the parents;

the names and ages of other children of the present marriage, including any child who is deceased.

It is to be noted that while the Registry requires notification of the father's occupation, it requires no equivalent

information about the mother. As a result of complaints received by the Anti-Discrimination Board, the Registry altered its practice in 1981 to provide an option to have the mother's occupation recorded. If the option is exercised, the information will appear on the register in brackets after the mother's forenames. The result is still discriminatory in that occupational information is required of the father (and is listed separately) but not of the mother.

The Commission is of the opinion that the practice of requiring occupational information about one parent and not the other is out-dated. We see no reason why such discrimination should continue between men and women. The Commission believes that recordings of parental occupations can be both useful and interesting. Such records can assist in establishing the identity of a person, or in tracing someone who has a common name. Family historians will also find the information interesting. **Therefore, the Commission proposes tentatively that the supply of information with respect to a mother's occupation should be mandatory.**

The Commission has also received submissions on the amount of information to be included on the register. Some express satisfaction with the detailed information presently required and some go further and suggest extension of current requirements to record facts such as ethnic background. In contrast are the comments received that the amount of information now required constitutes an unnecessary intrusion by the state into the private lives of individuals. Although all the information recorded may be of interest or use to both government and the individual this, of itself, may not be sufficient justification for the invasion of privacy involved. **The Commission seeks comment on the amount of information which should be entered on the register, but for the time being, we are of the view that there should be no change in the amount of information notified, apart from the addition of a statement of the mother's occupation.**

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As indicated above, the procedures for birth registration differ depending on whether the parents of a child are married to each other. Where the parents are married, the notification of birth must give details of the date and place of their marriage. The names and ages of any other children of the marriage must also be notified. Although technically the obligation to register is imposed on both parents it may be fulfilled by either parent completing the prescribed form.

For the parents of an ex-nuptial child there is no such joint obligation. The father of an ex-nuptial child has no duty to effect registration. Indeed, unless the mother is dead or missing, an unmarried father has no right to register the birth of his child without the co-operation of the mother or a court order. This seems inconsistent with the policy of the Children (Equality of Status) Act 1976, which sought to equate the treatment at law of ex-nuptial children and those born within marriage and to simplify the grounds on which paternity could be established.

The assertion has been made in a number of complaints received by the Commission and the Registry that the statutory provisions are discriminatory in that unmarried parents must go through a different registration process from those who are married. There is also discrimination in denying fathers the same rights as mothers in the registration of the births of their children. At present a single mother may register birth particulars without involving or even naming the father of the child and there is no requirement that she justify or explain her decision not to involve the father. However, if the mother does wish to register the name of the child's father, she must obtain his concurrence first, or a court order.

To some this constitutes an unjustifiable exclusion of the father, who is otherwise conferred significant entitlements and obligations by the law. It equates the father who lives in a stable but de facto relationship with one who merely fathers a child in a casual liaison, and it does not distinguish between the father who wishes to assume, or is

prepared to accept, all the responsibilities of a parent and the one who does not. Others, however, are prepared to accept the law as it stands. They see it as a necessary protection for men against being falsely named as the father of a child, and as a means of excluding a disputed record of paternity from the register. The Principal Registrar has expressed the view that both parents should be required to sign the form of information. Where one parent is unavailable or the parties cannot agree the Principal Registrar would prefer to have the matter referred to an independent arbiter or tribunal. One of the Principal Registrar's main concerns is to protect the unmarried mother from spiteful or mischievous claims of paternity. He regards the woman as the person who is often less able financially to defend false claims which might be made if her consent were not needed to the registration.

**The Commission is of the tentative view that a man who formally acknowledges his paternity, or who can prove cohabitation with the mother in circumstances giving rise to a legal presumption of paternity, should be entitled to the same rights as a married father.** That is, he should be able to notify the birth without proving the active assent of the mother, and he should have his role as father acknowledged in any registration effected by the mother alone. The penalty against furnishing information containing material that is known to be false or misleading should adequately protect all parties, just as it does where a child's parents are married to each other.

If the mother disputes paternity she has the opportunity, under the Children (Equality of Status) Act, of having the acknowledgment annulled. The possibilities of annulment and/or prosecution for false notification, combined with the potential financial burden of maintenance which may result from an acknowledgment, lead the Commission to believe that there is already sufficient disincentive to the making of a false acknowledgment of paternity to allow the right to register to be extended to the unmarried man who acknowledges paternity. An acknowledgement of paternity should be sufficient to allow registration of a man as father of a child. The Commission recognises, however, that until annulment by the Supreme Court the registration of such an acknowledgement gives rise to a presumption of paternity in favour of the man making it. We seek an expression of views on whether our proposals accord with the policy of the Children (Equality of Status) Act.

In the previous section of this paper the issue of the amount of information notified on birth registrations was raised for discussion. An important question was whether the prescribed form of information should require disclosure of details indicating whether the child's parents were married to each other at the time of birth. This issue is canvassed further later in the paper. At this point the Commission wishes to make the limited point that even **if information concerning the marital status of parents is to be sought, the existing system requiring the use of different forms for the two groups should be abandoned.** Details of the marriage of a child's parents should be sought simply as part of the range of information requested in the form of notification. **The Commission also suggests that birth certificates which omit reference to marriage should be available on request.**

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From earliest times the common law has allowed complete freedom of choice in the name by which a person wishes to be known. At common law a name is acquired by usage and reputation; its legality does not depend upon the making of a deed or registration. People are free to choose their own names and those of their children including the surname. However, this freedom has not been reflected in Registry practice. The Registry has imposed restrictive conditions on the registration of a name. Because at common law use of a name does not depend upon registration, and because the register is not conclusive evidence of a person's lawful name, in adopting these rules of administrative convenience, the Registrar does not regard himself as denying individuals the right to choose a name.

Although there is no statutory power to do so, on occasions the Principal Registrar has refused to register a chosen

forename. There are cases where it may be appropriate for the Principal Registrar to regulate the registration procedure. It may be proper, for example, to reject for registration a name comprising a string of obscenities, a list of numbers or a very long list of names, but the discretion should be narrowly defined. For instance, the Principal Registrar suggests that it would be reasonable to limit registration to at most six forenames.

Current practice requires the parents to notify a surname for their child and the Registry imposes restrictions on the parents' freedom of choice which do not exist at common law. The Registry's Form of Information sets out its requirements for the registration of a surname. Where the parents have the same surname the child must be registered in that surname. Where a child is born outside marriage, the child must be registered in the mother's surname unless paternity has been acknowledged. Where the parents use different surnames and jointly request it, the Registry has since 1979 allowed registration of a surname formed by combining the surnames of both parents, with or without a hyphen.

At present these practices are rigid. Although provision is made for a change of name to be recorded within 12 months of birth, to ensure that the register reflects the name by which the child has become known, initial registration must accord with established practice. The Registry will not accept a surname which is different from the parents, even if the variation is only in the spelling.

This does not mean that the Registry has been unable to respond to the needs of many ethnic groups. Where a group's naming practices do not produce a traditional surname, the Registry will permit a name to be registered which is the result of a combination of the parents' surnames or of their surnames and forenames. For instance, this practice accommodates cases where the child's name is derived from the surname of the grandfather, because in those cases the father usually carries the grandfather's surname as his forename. The Registry is even flexible enough to allow children in the same family to bear different surnames, so long as they are derived from those of their parents.

Some believe these practices are desirable to ensure that the child is linked with its family. Any other practice, it is said, would unduly complicate the work of future genealogists and family researchers. The Commission's view is that the administrative restrictions imposed are unfortunate. They discriminate against those groups whose traditional naming practices do not involve the passing of surnames through generations. They also prevent registration of surnames which have been anglicised or varied in some other way, although the result may be a name which is lawfully chosen by the parents for their child.

**The major option for reform in this area is to allow parents total freedom in the choice of a surname. This would include the choice of a surname which is different from that currently used by either parent.** A variant on this option would limit the right to register different surnames for siblings of the same parents. The Commission seeks views on whether these options are acceptable. Alternatively, we seek views on whether the Principal Registrar should continue present practice and restrict the choice to the surname of either or both of the parents, or a hyphenated version thereof.

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The issue of registration of a child's surname at birth becomes more complex where there is disagreement between the parents. Until 1985 the Registry's practice in cases of dispute was to prefer the father's name for the child where the parents were married and the mother's where they were not married to each other.

In 1985 the New South Wales Equal Opportunity Tribunal heard the case of *Ms L v The Principal Registrar of Births Deaths and Marriages*. The case involved conflicting registrations made by the parents in respect of the birth of their

child. The first registration was by the mother in her family name; the second, by the father in his name. In accordance with standard practice at the time, the Principal Registrar deleted the mother's notification from the register. As the parents were married the paternal name was allowed to prevail. The Equal Opportunity Tribunal found the Registry practice to be unlawful in that it constituted discrimination on the grounds of both sex and marriage. The Tribunal found that, whether the parents were married or not, the Principal Registrar was obliged to register the name indicated on the form of information first lodged at the Registry. Since February 1986, the Registry has recorded the date and time of lodgment of all forms of information of birth. In the rare event of there being two valid but competing notifications, the particulars in the earlier one will be registered.

In adopting this new practice, the Registry has exposed itself to a different criticism, for it is said that the new practice itself is discriminatory against women because her post-natal confinement places the mother at a disadvantage in the race to the Registry. Indeed, the change in practice prompted the press headlines "Get Me to the Registry on Time".

At present the problem is confined to birth registrations by parents who are married. The possibility of there being contradictory forms of birth notification for ex-nuptial children is slight because of the requirement that the father of an ex-nuptial child obtain the concurrence of the mother, or a court order, before he can apply to register a birth.

There is also another view of the registration procedure which must be considered. It is said that if the ultimate issue is the welfare of the child, and not the rights of parents to have their names made part of the child's name, there is no need to provide a mechanism for resolving disputes at the time of birth. The child's interests may be better served by use of the procedure to register a change of name later when proof is available that a name different from the one registered has been lawfully acquired by use and reputation. In the final analysis, it is argued, the court may order that steps be taken to change a child's name if it be in the best interests of the child to do so.

**The Commission's tentative view is that it is important for a mechanism to be devised which will enable a child's birth to be registered with particulars of a surname.** This will give effect to Principle 3 of the United Nations Declaration of the Rights of the Child 1959, which states that "the child shall be entitled from his birth to a name ...". It also recognises the child's right to an identity. However, the mechanism adopted should be administratively convenient and should not require the Principal Registrar to resolve disputes or exercise a discretion; that is the task of the Family Court.

In the vast majority of cases, the choice of a child's name will be made by agreement between the parents, and the Principal Registrar will not be involved further than to effect registration of the chosen name. Where the Registrar is notified of a disagreement between the parents over the child's surname, there are a number of ways in which the matter could be resolved with administrative convenience. These are listed below but it is stressed that the options proposed are directed solely at those rare instances where there is sustained disagreement between the parents. In most cases the surname registered will be chosen by the parents by mutual consent.

**Option 1 - Accept the current "first past the post" rule.**

**Option 2 - In the event of dispute, register the father's surname if the parents are married and the mother's if they are not.** Whilst this solution would offend some people it reflects current custom in much of Australian society and provides an administratively easy solution for the very few parents likely to be in dispute. It should be remembered that ultimately either parent may obtain a court order directing the other to accept registration of a name which the court holds to be in the best interests of the child.

**Option 3 - Place no surname on the Register.** When the child has acquired a surname by usage application would be made to add the surname to the register. (At present the Registrar requires evidence of 12 months' use of a particular name before it can be recorded in the register.) If either parent wants a different name entered on the register he or she can go to court to resolve the dispute on the basis of the interests of the child. This option is not favoured by the Commission; it would be contrary to the spirit of Principle 3 of the United Nations' Declaration (above), that every child has a right to a name at birth.

**Option 4 - In the event of dispute, register as the child's surname, a hyphenated combination of the surnames currently used by the parents, arranged in alphabetical order.** (A variant of this would allow the mother to use her unmarried surname even if she was not currently using it at the time of registration.) It has been argued that this would preserve the interests of both parents, whilst giving the child a stronger sense of identity than Option 3. This may involve forcing the registration of a surname which neither parent wants. This option could, however, contain a provision expressly entitling a parent to apply to a court for an order declaring the surname under which the child is to be registered (this entitlement is available in Victoria).

Only Option 1 could apply in the unlikely event of a dispute about a forename.

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### [Registration of Change of Name](#)

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A person's name may be changed at will and does not have to be registered to be effective. Usage and reputation provide evidence of legal change. Registration of a deed poll is also evidence of an intention to change a name, but it is neither necessary nor sufficient to establish lawful change.

**We are tentatively of the view that registration of a change of name should continue to be optional.** Any mandatory requirement would involve considerable inconvenience and administrative cost to the public. A mandatory requirement would need to define exactly what changes should be registered. Familiar name changes (for example, the use of an abbreviated form of a name or a change such as from William to Bill) should not require registration. A precondition that a change of name be registered in order that it be lawful, would involve a significant departure from the existing common law which treats names as a matter of repute. While it may be that in a limited number of cases a mandatory requirement would assist in the enforcement of the criminal law, the Commission is not aware of any data suggesting the need for such a change.

**The Act authorises the Principal Registrar to record in the register of births, any lawful change of name, but prevents him from recording a change of surname "consequent upon or effected after ... marriage". While this prohibition may be convenient administratively, the Commission finds it difficult to justify and tentatively proposes that it be repealed.**





**The practice has been to require proof of exclusive use of a new name for a period of at least 12 months before the Registry will accept that a legal change of name has occurred. Upon such proof, the Principal Registrar will allow the registered particulars of an adult or child to be altered. This practice seems unduly technical and does not reflect the common law rules on what is required for a change of name. The Commission tentatively proposes that this practice be changed but not so as to allow alteration of the register before there has been a change of name which is recognised at law.** The options for reform appear to be:

**Option 1** - To formalize the Registry's practice by requiring the use of a new name for a 12 month period, 12 months' usage being as sound a benchmark for establishing reputation as any.

**Option 2** - To require 12 months' usage as in Option 1, unless there is better evidence such as an executed deed poll or a court order.

**Option 3** - To require production of a registered deed poll.

**Option 4** - To leave the statute as it is and change administrative practice where it departs from the law.

Even after the register has been amended, a full  **birth certificate**  will still indicate the succession of names which have been registered since birth. While this may cause embarrassment on occasions, it can also serve as a useful means of proof of identity at different stages of a person's life. In many cases embarrassment can be avoided by issuing extract certificates which record only the latest registered name of the person. **The Commission does not propose any change in the practice relating to the material contained in full  birth certificates .** Later in this paper a proposal is made to allow greater flexibility in the issue of extract certificates.

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### [Registration of Deaths](#)

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In its work on this reference to date, the Commission has found very little evidence of dissatisfaction with the operation of the register in relation to deaths. In practice, funeral directors complete the prescribed form of information of death, using information supplied by a relative of the deceased. A medical practitioner supplies a certificate to the Registry, stating the cause of death. In exceptional circumstances a medical certificate cannot be signed and detailed information about the cause of death is only obtained after coronial inquest. The procedures under the [Coroners Act 1980](#) are outside the scope of this reference. The Commission notes, however, that amendments made to the Act in 1986 have clarified the coroner's power to provide interim information to the close family of the deceased. These amendments appear to resolve the only matter of complaint which had been brought to the Commission's attention.

**Submissions are invited on whether there are any issues calling for reform in respect of the registration and certification of deaths in New South Wales.** One matter which has been brought to our attention is the range of information required to complete the registration. On the present form of information of death, the information required is:

surname, full christian and other names;

usual occupation, or if retired, former occupation;

sex;

age;

marital status at date of death;

date of death;

place of death (providing name and locality of hospital or full address if death occurred elsewhere);

full address of usual residence;

place of birth (and if not born in Australia the period of residence);

name of father;

maiden name of mother;

full particulars of most recent marriage of deceased and all past marriages (where married, at what age, and to whom); and

first names of all children of the deceased (including children of past marriages, ex-nuptial children and adoptions).

All of this information appears on the register and further information is required which is not recorded on the register. The latter is for use by other government bodies and provides details of the following:

municipality or shire in which deceased usually resided (for the Australian Bureau of Statistics);

whether or not the deceased was considered to be an Australian Aborigine (for the New South Wales Health Commission); and

the type of pension held if the deceased was a pensioner (for the Department of Social Security and Department of Veterans' Affairs).

There is concern that some of this information may cause embarrassment. It has been suggested, for example, that the disclosure of children of a previous marriage or other relationship, the identification of the cause of death, and the identification of the place of death (for example, in a gaol) may cause embarrassment. The Commission accepts that the gathering and recording of this information is important to many government functions. It provides the material from which statistical analyses of causes of death can be made. Such information also serves private interests. It allows family trees to be traced and relationships to be proved for property and probate purposes. **The Commission tentatively proposes no change to either the law or practice of registration and certification of deaths.**

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### [Transsexuals](#)

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Although the surgical process has been carried out in Australia for almost two decades, transsexuals continue to complain that their post-operative sexual re-assignment is not given due legal recognition.

The Act requires the sex of a person to be registered at birth. In recent times the Principle Registrar has allowed a record to be made of the historical fact of sexual re-assignment following surgery but the person's sex as recorded at birth remains alongside it on the register. **The Commission is tentatively of the view that all this information should be recorded on the register but that the information should be recorded in such a way that the original register is not open for public or official scrutiny except with the consent of the person involved or by way of a court order.**

The Principal Registrar's current practice is to refuse transsexuals the right to register a change of name (for example from John to Joanna), unless "appropriate documentation" is provided of sex change surgery. This is to invoke a requirement, in addition to proof of name change, which does not generally apply. Since October 1987 the Principal Registrar has decided to allow the issue of extract certificates of birth to transsexuals who have changed their names.

The extract does not contain particulars of gender but the full certificate, required for many legal purposes, will continue to show not only former names but also the sex registered at birth.

The major concern of the Principal Registrar is that the extract could be used by the transsexual person for the purposes of the [Marriage Act](#) and a prospective partner or marriage celebrant could be misled and participate in what would be a void marriage between two persons of the same sex. The Commission is of the opinion that the marriage law is an ample vehicle to protect society against such deception. **Our view is that the current practice is not only discriminatory but also capable of causing unnecessary embarrassment to a person who has made a genuine commitment to sexual re-assignment.** Our proposals will not affect the substantive law of marriage in Australia which currently regards a marriage between people of the same sex as void.

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### [Access to Registered Information](#)

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A large number of State and Federal government departments have extensive access to the information recorded in the register. In some cases the information is made available pursuant to express statutory authority given under the Registration of Births, Deaths and Marriages Act 1973 while in others permission is granted by the Principal Registrar in accordance with agreements made under the Statistics (Arrangements with States) Act 1956-1958 (Cth). Access is currently obtained on computer tape or through facilities made available for officers to peruse all the registered material, but in the future it could be available on-line by linked computers. Such government access represents one of the major functions of the Registry as the information examined is essential for statistical purposes (for example, causes of death and perinatal statistics). Other departments, such as the Commonwealth Department of Social Security, gain access to the information for the purposes of facilitating or checking the accuracy of claims to pensions. The Principal Registrar has informed the Commission that no information is released until "the necessary assurances regarding confidentiality and destruction or safe storage of the information" are obtained.

**The Commission is tentatively of the view that no change in law or practice is required. However, those providing information for registration should be informed of the extent of government access to the information, perhaps by a notice appearing on the form of application for registration.** We are aware of the issues of privacy which some members of the public may wish to raise. These include questions about the need to obtain all the information currently required to be notified and whether the registered information should be so freely available to government departments. The capacity for on-line computer access also raises issues which are different from those raised by the manual retrieval of information. We seek submissions on these matters.

Members of the public gain access to the registered information by ordering certificates. The choice in **birth certificates** is between a full certificate or an extract, the extract being restricted to details of forename, surname and date and place of birth. The Act provides that any person who applies in writing and supplies a sufficient reason, shall, on payment of the prescribed fee, be issued with a certificate. The word "sufficient" is not defined. In practice the Registry will not issue a **birth certificate** unless the person named in the register applies directly or unless there is express authority given by that person. **Birth certificates** of people who have died will not be supplied without the consent of the next-of-kin of the deceased (unless the death occurred a long time ago). Death certificates will only be issued to members of the family or a solicitor or legal representative of the deceased. In respect of recent deaths, where members of the deceased's family are still alive, this practice excludes genealogists unless, of course, they are related.

The question is whether this control is necessary. Some argue that the registered information should be freely

available to any searcher who is willing to pay the prescribed fee for the appropriate certificate. Such open access is available under the English Births and Deaths Registration Act 1953. If restrictions are to remain, it may be appropriate for guidelines to be set for what is a "sufficient" reason to entitle the issue of a certificate.

A related issue is whether the full copy  **birth certificates**  should continue to contain information which reveals whether or not the child's parents were married to each other at the time of birth. The Commission has received complaints that this information can be distressing. The cause of distress is not that the certificate contains information from which others may learn of the child's illegitimacy but that often it is the source from which the child first learns of the circumstances of its birth.

**The Commission is of the tentative view that such details should continue to be required and recorded by the Registry, but that the forms of the certificates should be more flexible. Applicants should be able to obtain a certificate omitting any detail which is unnecessary for their purpose in requesting it.**

Although the stigma of having been born outside marriage may be diminishing, in the Commission's view it is not the function of the Registry to play any part in reshaping public attitudes. To deny access to this or any other information which is currently available on the register would be to fetter the many public and private functions the Registry serves. However, the greater flexibility in style of certificates which computerization makes possible, should enable those who are embarrassed by any detail recorded, to have the detail omitted. **People should be able to order an "almost full" certificate which satisfies the purpose for which they require it.**

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The Commission invites comment on any matter covered by this reference or discussed in this paper. Specifically we would welcome your views about:

the appropriateness of the guidelines for reform which we have stated;

the function of the Registry. Does it provide a mere repository for statistical information and records of family histories or does it serve some more formal, legal purpose. Should the powers of the Principal Registrar change according to the function fulfilled by the Registry?

whether there should be more or less, or any change in, the information required in relation to a birth or a death:



whether a person claiming to be the father of an ex-nuptial child should be entitled to effect registration of the birth without having first to secure an acknowledgment of paternity from the mother or proving paternity in legal



proceedings;

how much freedom of choice should parents have in registering a surname for their child.

whether the Principal Registrar should have a discretion to refuse registration of any forename or surname specified by the registering parent(s);

the rules which should apply to resolve disputes between parents as to naming children;

whether there should be any change to the current procedures for proof of change of name before the change can be recorded in the  **birth certificate** .

whether there should be any special rules concerning registration of change of particulars on  **birth certificates**  applying to transsexuals;

whether there should be any restriction or relaxation on public and governmental access to recorded information in the register, including access by certificate and on-line computer.

Comments and submissions should be addressed to:

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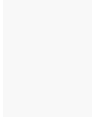
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